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No. 83-1242

IN THE

Supreme Court of the United States

October Term, 1983

SUN MYUNG MOON and TAKERU KAMIYAMA,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF AMICUS CURIAE OF THE FREEMEN INSTITUTE IN SUPPORT OF PETITION FOR CERTIORARI

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QUESTION PRESENTED

Is it constitutionally permissible for the courts to penalize or ignore a centuries-old practice of holding church property in the individual name of a church leader, particularly when that leader is seen by his followers as the very embodiment of their faith?

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BRIEF OF THE FREEMEN INSTITUTE AS AMICUS CURIAE

Pursuant to Rule 36.1 of the Rules of this Court, the Freemen Institute files this brief in support of the instant petition for certiorari, having obtained consent from the attorneys of record for the parties in this case. Their original letters have been filed with the Clerk of this Court.

INTEREST OF THE AMICUS CURIAE

The Freemen Institute is described by its very name. It is an organization devoted to the goals of individual freedom – not the least of which is religious freedom. The erosion of important

rights and freedoms rarely begins with a direct attack on the established, the respected and the powerful. Basic freedoms, in particular religious freedom, are most frequently destroyed when the more comfortable majority fails to defend the rights of an unpopular minority.

The Freemen Institute, founded in 1971, is a membership organization with more than 250,000 members and contributors. It publishes a wide variety of books, periodicals and journals dedicated to the understanding and realization of constitutional principles and freedoms.

The Institute is deeply concerned that the Court of Appeals for the Second Circuit has permitted and even encouraged judges and juries to disregard the Religion Clauses of the Constitution in penalizing churches and church leaders for their choices concerning the way assets used for religious purposes are to be held and maintained. It is especially concerned that the court's ruling in *United States v. Moon* has essentially outlawed the common and historically respected practice of religious leaders holding church assets in their own names to be used for religious purposes.

STATEMENT OF THE CASE

Amicus curiae adopt the Statement of the Case as set forth in the petition for certiorari, insofar as the facts set forth therein are relevant to this brief.

SUMMARY OF ARGUMENT

For more than a thousand years, church property has routinely and uneventfully been taken and held in the personal names of church leaders. This is true whether the property was devised, transferred from their predecessors in office, or received in the form of gifts or donations from communicants and followers. This ancient and still widespread practice is amply confirmed by both textual authorities and a host of reported decisions.

The instant case provides a classic example of this practice. But the evidence which demonstrated this practice within the Unification Church was, with the approval of the Court of Appeals, either (1) ignored by the trial court; (2) excluded by the trial court pursuant to government objection when offered by the defense; or (3) rendered virtually meaningless by the instructions given to the jury.

This brief documents the practice. It also demonstrates that the factual predicate was irrefutably presented below for a finding that the property at issue in this case belonged to petitioners' church, rather than to Reverend Moon as an individual. Nevertheless, the courts below failed to resolve these issues consistent with the clear line of historic and judicial authority. In so doing, the courts violated Reverend Moon's rights to equal protection and the free exercise of religion.

ARGUMENT

I. HOLDING CHURCH PROPERTY IN THE INDIVIDUAL NAMES OF CHURCH LEADERS HAS BEEN, AND REMAINS, AN ACCEPTED AND WIDESPREAD PRACTICE. THIS IS PARTICULARLY TRUE WHEN THE LEADER IS SEEN BY HIS FOLLOWERS AS THE VERY EMBODIMENT OF THEIR FAITH

A. The Unification Church and Reverend Moon

The status of the Unification Church as a *bona fide* church is no longer subject to serious question. It is settled law. "[B]y any historical analogy, philosophical analysis, or judicial precedent . . . [the Unification Church] must be regarded as a bona fide religion." *Unification Church v. Immigration and Naturalization Service,* 547 F. Supp. 623, 628 (D.D.C. 1982). Wrote the New York Court of Appeals: "[W]e conclude that on the record before us, as a matter of law, the primary purpose of the [Unification] Church (much of whose doctrine, dogmas and

teachings and a significant part of whose activities are recognized as religious) is religious. . ." *Holy Spirit Association v. Tax Commisison*, 55 N.Y. 2d 512, 528, 450 N.Y.S. 2d 292, 435 N.E. 2d 662 (1982).

Regarding the relationship between Reverend Moon and the Unification Church, the unanimous New York Court of Appeals stated: "The Holy Spirit Association for the Unification of World Christianity (the Church) is one of more than 120 national Unification Churches throughout the world propagating a common religious message under the spiritual guidance of the Reverend Sun Myung Moon, the Unification movement's *founder and prophet"* (emphasis added). *Id.* at 519.

Indeed, Reverend Moon's central position in the theology of the Unification Church, not just as its founder, prophet and worldwide leader, but also as the instrument for the accomplishment of its divine mission, *see id.* at 542, is so widely known as to be a matter of common knowledge. Why else would members of the Church be called "Moonies"? This key fact was not disputed by the government or the trial court. It had crucial relevance to the core issue in the case – the beneficial ownership of the assets in question. Nevertheless, it was excluded from consideration by the trial court in acquiescence to the government's contention that Reverend Moon's religion and his relation to it had nothing to do with the case.

As the prosecutor explained in post-trial proceedings: ". . .[W]e undertook to try Reverend Moon. . . like any ordinary person charged with tax fraud" S65;[1] "we have dealt with [him]. . .just as the government deals with any high ranking business executive." S125. The government in its closing argument stated: "This case is not about tax exemption of churches. It is about personal income tax to an individual who happens to be related to a church." T6174.

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[1]References to pre-trial hearings will be cited as "P____"; references to the trial transcript will be "T____"; references to post-trial hearings will be "S____"; and references to the pleadings will be "A____".

Any high ranking business executive indeed! HAPPENS to be *related* to a church indeed! Just as Luther, in administering the religious affairs of his congregants, was like ANY high ranking business executive who HAPPENED to be *related* to the Lutheran Church. Like Baha'u'llah *happened* to be a Baha'i; like Mary Baker Eddy *happened* to be a Christian Scientist; like Brigham Young happened to be a Mormon; like Menachem Schneerson happens to be a Lubavitcher.

The error permeating the government's case was compounded by the refusal of the trial judge to instruct the jury on Reverend Moon's unique role as a religious leader who is viewed by his followers as the embodiment of the faith – an instruction that was amply supported by the only evidence on point. A1509-12, T5516, 5524, 6367-68.

Presiding Circuit Judge Oakes recognized this point in his dissent: "[T]he taxpayer here was the founder and leader of a worldwide movement which, regardless of what the observer may think of its views or even its motives, is nevertheless on its face a religious one, the members of which regard the taxpayer as the *embodiment of their faith*" (emphasis added). *United States v. Moon*, 718 F.2d 1210, 1242 (2d Cir. 1983).

And how does this "embodiment of their faith" consider and treat the money? How do *members* of the church regard money which he receives? To both Reverend Moon *and* Unification Church members, the money is church money to be used for church purposes. This does not make Reverend Moon "a walking unincorporated association." T6119. Nor does it create a "loophole" for religious leaders to hide behind the First Amendment and escape liability for violations of criminal or tax laws. It does not mean that the individual religious leader has no separate and distinguishable legal identity apart from the religion itself, nor that he is freed from an independent responsibility for taxes on personal income. Nevertheless, the court below apparently misconstrued Reverend Moon's defense entirely when it said: "We do not accept this defense. . .Moon's spiritual identity as a leader of the Unification Church move-

ment and his legal identity as a taxpayer are not the same." 718 F.2d at 1227. This has *never* been Reverend Moon's claim.[2]

To say that Reverend Moon or any other religious leader holds funds in his own name in this context simply means that the church entrusts its leader – be he a founder, prophet, or bishop – with the authority to administer the funds in a manner consistent with their religious intentions and purposes.

B. The Record

With an ordinary lay person, the mention of his name evokes primarily the image of the individual and only secondarily such key relationships as his profession or religion. In the case of a religious leader, particularly the founder and prophet of a religion, just the reverse is true. As with the Pope, *see* 718 F.2d 1227-28, the mention of the name evokes not the image of the individual but the image of the church and the office. As with both the Pope and the Reverend Moon, a reference to the individual is the equivalent of a reference to the institution he symbolizes.

The "oneness" of Reverend Moon and the Unification Church – and the "oneness" of the bank accounts here – is revealed in the record.

Testified Eugene Galbraith, the bank officer responsible for the Chase accounts in Reverend Moon's name: "I must say that the name of the church and of Reverend Moon became synonymous in the minds of everyone in the bank at or about that time." T3670. And Mr. Galbraith "really never in [his] own mind was able to separate the two." T3662.

Michael Runyon, the church member who served as Reverend Moon's representative in dealing with the accountants and

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[2]It should be noted that Reverend Moon did in fact file tax returns for the periods in question and did pay income taxes on amounts used for his family's own needs.

lawyers regarding his 1974 and 1975 tax returns, also testified that the Chase account was representative of the holdings of the international movement, even though the monies were made out to the order of the Reverend Moon. T4651-52, 4784-85, 4817.

Douglas J. Green, the C.P.A. who prepared Reverend Moon's tax returns for the years 1974 and 1975, on direct:

> Q. "Tell us as best as you recall what Mr. Runyon told you about that."
>
> A. "Okay. In 1973, there was a personal checking account established that Reverend Moon had signatory power over to write checks on and so on and so forth and that they were church funds." T4183

Again, Mr. Green:

"They presented us with one Form 1099 in Reverend Moon's name and told us it was a time deposit, a church account and he was only the nominee for it." T4185.

Now from two of the affidavits submitted on point: First, David S.C. Kim, one of the church elders:

"It was further agreed that such a large scale international effort, the first ever undertaken by our Church as a worldwide movement, would be centered upon the Rev. Moon, the natural focus of unity and cooperation among us all. As to financial matters, our international church leaders expected to receive the most donations from Japan. At the meeting, Mr. Ishii made a suggestion that opening a bank account in Rev. Moon's name would help in asking for donations. The reason for doing so. . .was that Japanese members knew little about the American Church, since there were few Japanese members in America at the time. Rev. Moon willingly approved of the proposal and as a result a bank account was opened in Rev. Moon's name on behalf of the Church to receive funds from around the world." A194.

The presidents of the three national churches of America, Korea and Japan, in an affidavit submitted in support of Reverend Moon's motion for a new trial:

"In the eye of the devoted, Reverend Moon is thus one with the faith he founded – not with any of its individual and particular corporate extensions, each of which is self-governing under his spiritual guidance, but with the incorporeal faith itself. . . This is why Reverend Moon's followers are often known as "Moonies", just as the followers of Mohammed are called Mohammedans or of Buddha, Buddhists. Even while outsiders may use the term as a derisive description of the members of our faith, we regard it proudly as a symbol of our unity with the God-centered faith that Reverend Moon embodies. . .[W]hen monies and assets are entrusted to him by the faithful, they are considered to be placed in his hands as the instrument and personification of the religious movement as a whole – not just as one aspect of that movement, but of the movement in all of its complexities, diversities, and goals." A1510, 1512. *See also* A1486.

What was excluded from the record is also relevant. At trial the defense sought to argue that, given the defendant's special role within his religion, the meaning of the defendant's control and use of assets was that they belonged to the church as a whole, and were merely held *for* it by the defendant as the church's embodiment.

But defense efforts to present such evidence brought forth objections from the government which the trial court repeatedly sustained. On one occasion, a principal defense witness endeavored to explain, in response to questioning, that Reverend Moon's signature upon an investment agreement (characterized by the government as "personal") in fact signified an investment and an obligation undertaken by and on behalf of the church. The court summarily sustained the government's objection. T5681.

In the case of a knowledgeable government witness, the defense was prevented from eliciting testimony regarding Reverend Moon's and the Church's views on the relationship between the Church and business. T5254. The same pattern was repeated with other witnesses from whom the defense sought to T5681.

elicit similar testimony regarding the religious basis for the investments.

The efforts of the defense to develop this evidence were also opposed by a darker, more menacing tactic. For example, in one instance defense counsel attempted to show that various commercial enterprises were in fact entered into on behalf of the Church – in order to enable it to develop a financial base to support and advance its work. T4819. The government continually threatened that any such attempt to bring such "religious" evidence into the case would result in the government's disclosure to the jury of "negative things abut the Church," T5760, which would no doubt have inflamed the jury's bias against Reverend Moon and his religion.

This chilling of the defense argument was evidently approved by the trial court itself. More than once it warned the defense that any efforts to offer religious explanations would "inadvertently open some doors" to the introduction of prejudicial evidence by the government. T3044; *see* T3042-45, 4818-20, 5257, 5759-60. As defense counsel was forced to conclude: "if your Honor's feeling is that my asking [a religion-oriented] question opens the door to the kind of thing they are talking about, then I feel precluded from asking the question." T4820. *See also* A1486-87.

The prosecution apparently realized that the only way Reverend Moon could be found guilty was if he could be pried apart from the Unification Church. Only by so separating him and ignoring his religious status could his activities be considered secular, the practices of a private businessman. Even with ordinary clergy there can be an implied trust or agency whereby it is perfectly valid for a church leader to hold funds in his own name on behalf of his church. In the case of Reverend Moon, there is still more involved because his followers see him as the very embodiment of their church.

C. History

The "oneness" of church leaders and their churches has a long history. And that history records that it has been a common practice for church leaders to hold property in their own names in trust for their churches. That history is reflected in American case law which recognizes this fact and presumes this relationship. But, as explained above, to his followers Reverend Moon is no *ordinary* church leader.

Explaining the exact relationship between Reverend Moon and the Unification Church goes beyond the scope of this brief. However, in summary: It is well established that Reverend Moon is both the founder and leader of his church. He is a prophet. His adherents look to him to establish the True Family serving as the foundation for eradicating evil in the world and accomplishing humankind's salvation. A1107. The Unification Church is the manifestation of his theological teachings.

In explaining the relationship between founder-prophet Reverend Moon and the Unification Church, analogies are useful but difficult to make. Certainly he is more the embodiment of his church than, for example, the annually elected president of the Council of Bishops of the United Methodist Church.

Reference to the Baha'i Faith, an off-shoot of Islam, is instructive. The mainspring of the hostility to the Baha'i minority has been the Islamic clergy's rejection of the idea that there could be divine revelation after Muhammad, who they regard as the last of the Prophets. This faith had its beginnings in 1844 with the announcement by one of its two founders, "The Bab", that his mission was to prepare the way for the Messenger of God for that age. Baha'is believe that Baha'u'llah was that Messenger. It was Baha'u'llah who founded the Baha'i community and brought the teachings of the Faith in 1863. This is not unlike the position Reverend Moon holds in the Unification faith. *See* A621-22.

Could one doubt that monies entrusted to the Bab or

Baha'u'llah by their followers over a century ago, were for their church?

Brigham Young provides another instructive analogy. For it was not until the controversy over his estate that the world learned that the Mormon leader was not *individually* and personally a millionaire. And it was learned how property held in Brigham Young's name was in fact held for the Mormon Church. President Young's estate generally had been estimated at between two and two and a half million dollars. Some estimates ran as high as eight million. But when final settlement was made, the actual amount found to be held by Brigham Young in his personal capacity was under $225,000.[3]

How Brigham Young had come to hold title in so much property is described by Professor Arrington in these words:

> [Mormon] Church leaders adopted the studied and deliberate policy of placing properties acquired by the church in the hands of the church president and other trustworthy individuals, to be administered by them on behalf of the church, but in a private capacity. This consolidation of the functions of the trustee-in-trust under the names of Brigham Young and others resulted from a general agreement that the church, through its leading men, must continue to function as an instrument for the attainment of the economic objectives of the group. The policy led to a confusion between Brigham Young, trustee-in-trust, and Brigham Young, private businessman. . .The choice made by church leaders explains why, in all his

[3]*See* Arrington, *The Settlement of the Brigham Young Estate, 1877-1879,* Pacific Historical Review (Feb. 1952) at 9-10. *See also Young v. Cannon,* 2 Utah 560 (1879). In the instant case the trial court made an inference that the funds in question could not have been held in trust because the amount was somehow unprecedented in its size. P99. The analogy to such figures as Brigham Young and Cardinal Cody demonstrates the fallacy of this inference.

> business dealings representing the church, President Young almost invariably signed for properties in his own name. . .It accounts for the wide-spread tendency among newspapermen, writers, and historians to give Brigham Young credit for many enterprises which were in reality enterprises of the church. [Footnotes] *Id.* at 4.

Another case in point is the Church of Christ Scientist. So much was Mary Baker Eddy the embodiment of the Christian Science religion that her great publication, *Science and Health with Key to the Scriptures,* is studied by her followers as the Koran is studied by Muslims and the Talmud is studied by Orthodox Jews. And this identification achieved Congressional recognition through a special law extending the copyright protection of her 1875 work. The Congressional enactment was Pub.L. No. 92-604:

> Those who are students or adherents of the Christian Science religion and worship in the Church of Christ, Scientist, founded by Mrs. Eddy, also look to the Bible and "*Science and Health with Key to the Scriptures*" as the only Pastor of this Church. . .The purpose of seeking copyright for this book is. . .to preserve and maintain the purity and integrity of the statement of the religious teachings of this denomination, and thereby to protect members of the public against the possibility that. . .they might receive a distorted version of the teachings of Christian Science instead of the true and correct version thereof. . .*Id.* at 2-3.

Menachem M. Schneerson provides another useful analogy. Born in 1902, heir to the ultra-Orthodox mystic teachings of the Chassidim and heir of the great leaders of the Lubavitcher sect, he ascended to leadership as the 7th Lubavitcher Rebbe in 1950, a position he holds to date. Dedicated to the spreading of Chassidic teachings throughout the world, it was he who

established Lubavitch Centers and Chabad-Lubavitch Houses in many cities in both the United States and abroad. He is revered by his followers as Reverend Moon is revered by the Unification Church members. He is the fountainhead, the wellspring. His is the final word on theological matters. In this context he is more than a mere individual.

Rebbe Schneerson is the recipient of large sums of money from his followers – sums which he is supposed to devote (and does devote) to his religion. That religion, like that of the Unification Church, requires large sums for its teaching and missionary activities.

Rebbe Schneerson also provides an example of the churchman who holds cash on behalf of the congregation. He regularly gives "audiences" at which his congregants line up for short question-answer-advice sessions. It is during such "audiences" that envelopes filled with money are handed to the Rebbe for religious purposes. And often the next man in line is given monies just received by the Rebbe to assist him as a needy parishioner or as one who is to carry out the work of the religious organization.

Roman Catholicism provides yet another example. The bishop (or cardinal) is the principal repository of all ecclesiastical power. Bishops are "the ordinary and immediate pastors of their respective dioceses, and as such have the right (and duty) to govern in spiritual and temporal matters, in accordance with the canons, employing legislative, judicial and coercive power." *Corpus Juris Canonici,* Canon 339.

Reviewing the investigation of the finances of the late John Cardinal Cody, head of the nation's largest Roman Catholic Diocese, the following appears in *Notes on Church-State Affairs,* 24 J. Church & St. 175, 196-97 (1982):

> The issue of most importance concerns the proper role of the U.S. government in the financial affairs of the Chicago archdiocese and John Cardinal Cody

> . . . . "[C]ontingency funds not subject to audit and under the complete control of the Church leaders is common to the United States. Perhaps the most difficult issue focuses upon the federal government's subpoena of archdiocese corporate records. Under Illinois law, the archiocese of Chicago is a 'corporate sole,' a legal designation that gives incorporation status to the cardinal and his successors in perpetuity."

All of the foregoing analogies clarify that Reverend Moon's holding church property in his own name is consistent with the tradition followed by other major religious figures.

D. Case Law

(1) *History*

Case law analysis — that is, American case law analysis — begins with an excursion into history, early common law history. The tour guide is Austin Wakeman Scott.

The centuries-old common law practice of vesting title to church property in the name of individuals is a custom which can be observed in the case of the Franciscan friars as early as the Thirteenth Century. Here is how this came about: In feudal times, church property in England was held in Frankalmoign tenure by "religious corporations." As the wealth and influence of the churches grew, they began to be perceived as threats to the king and his feudal lords. Thus the practice of holding title to church property in the name of individuals was used as a form of protection against punitive measures taken by aggressive monarchs, jealous not only of the church's spiritual power but of its temporal possessions.[4]

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[4]This history is instructive for it illuminates the fact that the practice was more than a mere convenience. It provided a substantive defense against aggressive government, a consideration as pertinent to U.S. Catholics in the 19th and 20th centuries as it was to those in 13th century England.

To avoid confiscatory laws directed against property held by "religious corporations," it became the custom of those desiring to benefit the church to convey property to an individual, but for the "use"[5] or benefit of the church. Since the land was held in the name of an individual person, it was not subject to confiscation. And since these individuals were usually clerics, they would be exempt from military fealty and service which normally attached to the land.

This practice gradually achieved official recognition and blessing, first by the Court of Chancery, which began to uphold such trusts in the sixteenth century. The trend culminated in the Statute of Charitable Uses in 1601 which specifically authorized them and provided for their enforcement by special commissioners. *See generally* IV A.W. Scott, The Law of Trusts (3d ed. 1967).

This legal heritage was carried to the American colonies. Authority (and an example) is provided by Justice Story in *Terrett v. Taylor,* 13 U.S. (9 Cranch) 43 (1815). In the Episcopal Church in the Colony of Virginia, title to real property was vested in the pastor and title to personalty was vested in lay officers known as church wardens:

> . . . the minister of the parish was, during his incumbency, seized of the freehold of its inheritable property, as emphatically *persona ecclesiae,* and capable, as a sole corporation, of transmitting that inheritance to his successors. The church wardens, also, were a corporate body, clothed with authority and guardianship over the repairs of the church and its personal property . . . *Id.* at 46.

And, as Circuit Judge Oakes pointed out in his dissent below ". . . there are numerous cases holding that a minister or other

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[5]The term "use" may be taken as synonymous with the word trust. Indeed, for hundreds of years, the term use was commonly used to denominate a holding in trust.

church official who held title to property in his own name did so as trustee for the church." *United States v. Moon*, 718 F.2d at 1243.

(2) *The Trust Relationship*

The most recent case exploring this title-trust relationship in depth is *Winn v. Commissioner*, 595 F.2d 1060 (5th Cir. 1979). The discussion of this case is introduced in the dissenting opinion below in these words:

> It appears that the assets in question came to Moon largely from members of his faith, and there was some evidence that the donors intended their contributions to be used by him for religious purposes. The religious context involved gives the case a special color. As noted in cases such as *Winn v. Commissioner*, 595 F.2d 1060, 1065 (5th Cir. 1979), funds donated for the use of an individual involved in religious work may be considered gifts to the religious organization with which the individual is affiliated. 718 F.2d at 1242.

Winn was also a tax case. The taxpayers sought (and succeeded in obtaining) a deduction for a $10,000 check paid to the "Sara Barry Fund" to support Presbyterian mission work in Korea. Contributions were channeled by Sara Barry's father, an elder in one of the sponsoring churches, into her personal bank account for use in her mission work. The Fifth Circuit held that, although the tax-exempt churches never received or had possession of the Winns' contribution, the Winns were entitled to a deduction.

> Proof that the church . . . sponsored 'Sara Barry Days' for the express purpose of collecting funds for this part of its work, that an officer of that church took the funds donated and dealt with them as the church wished, and that the funds went to the support of the work the church intended is sufficient to establish that the funds were donated for the use of the . . . Presbyterian church. *Id.* at 1065.

Additional authority is found in two Kansas cases involving the same church: *Dawkins v. Dawkins,* 183 Kan. 323, 328 P.2d 346 (1958) and *Gospel Tab. Body of Christ Church v. Peace Pub. & Co.,* 211 Kan. 420, 506 P.2d 1135 (1973). Interestingly, both cases bear the identical Syllabus by the Court:

> The established fact that a minister of an unincorporated church acted as the sole trustee of the church in handling its property and affairs, and later, acted as the dominant member of the board of trustees of the church, did not support the legal conclusion that the minister held title to the church property for his personal benefit. . . .

The Reverend Moon-Unification Church analogy is readily apparent.

(3) *The Agency Relationship*

Some courts have reached the same conclusion based on an agency theory rather than a trust theory. The leading case for this position is *Morey v. Riddell,* 205 F. Supp. 918 (S.D. Cal. 1962). It was cited with approval by Judge Oakes in these words: "Similarly in *Morey v. Riddell* . . . it was held that where money contributed to a totally unorganized religious association by way of checks to individual 'ministers' was used to meet expenses of the church, including the ministers' living expenses, [tax] deductions for religious contributions would be permitted." *United States v. Moon,* 718 F.2d at 1243.

The I.R.S. disputed the deductibility because the donations had been in the form of checks payable to the order of four of the church's ministers, claiming that these were gifts to the ministers. In upholding the deductions the court said: "[I]t is clear from the evidence that plaintiffs did not intend to make contributions to the ministers, individually, but placed the funds in their hands, as agents, for the use of the church." *Morey v. Riddell,* 205 F. Supp. at 921. The evidence showed that the members had refused to adopt a denominational name or any written organizational guide because "to do so would be

to add an arbitrary gloss to biblical precepts, thus obscuring the word of God." *Id.* at 919. Having disavowed formal organization, their only recourse was to make donations which would be held in the name of their ministers.

(4) *Catholic Church Property*

The "oneness" between church leader and church in the handling of finances perhaps is best known in connection with the assets of the Roman Catholic Church.[6] The four principal cases illustrating this relationship (the numbers are legion) are:

1. *Mannix v. Purcell,* 46 Ohio St. 102, 19 N.E. 572 (1888);
2. *Reid v. Barry,* 93 Fla. 849, 112 So. 846 (1927);
3. *Fink v. Umscheid,* 40 Kan. 271, 19 p. 623 (1888);
4. *Archbishop v. Shipman,* 79 Cal. 288, 21 P. 830 (1889).

Here is the sentence from *Mannix v. Purcell,* 19 N.E. at 584, which ties up history and American practice: "The parties have gone back fifteen centuries into the laws and canons of the [Roman Catholic] church, for proof of the nature of the tenure by which the archbishop held the legal title to the ecclesiastical property, and the proof is overwhelming that he was not invested with an absolute title to it as his own." The fact "that from time to time during the archbishop's service he exercises acts of apparent private ownership over property held for ecclesiastical uses" was held irrelevant. *Id.* at 585.

In the course of the lawsuit, the court allowed testimony as to the canons of the Catholic Church in order to show that by these Church precepts, the property was church property. In other words, it permitted evidence which would give a *religious and theological* explanation to show that the property held nominally by Archbishop Purcell was beneficially owned by the

[6] *See* G. Myers, *History of Bigotry in the United States* (1960). The leading work on the subject is Rev. Patrick J. Dignan's dissertation *A History of the Legal Incorporation of Catholic Church Property in the United States (1784-1932)* (1933). *See also amicus curiae* brief filed by the Catholic League for Religious and Civil Rights in support of certiorari in the instant case.

Church. Had the court excluded such evidence, deeming it irrelevant as in the *Moon* case, the only evidence on the record would have been that record title to the real estate stood in John Purcell's name in fee simple.

Reid v. Barry, 93 Fla. 849, 112 So. 846 (1927), involved the validity of a deed of land made to the Bishop of St. Augustine. It was a suit to quiet title to property taken under a deed transferring it to the "Right Rev. John Moore, Bishop of St. Augustine, Florida . . . and his successors in office and assigns forever." *Id.* at 858, 112 So. at 850. As pointed out in the bill filed by the Bishop, "[I]t is and has been the custom of the said church since long before the year 1881, and up to the present time, to take title to property it acquires, in Diocese of St. Augustine, in the name of the Bishop of St. Augustine for the time being, and his successors in office." *Id.* at 856, 112 So. at 849.

After discussing both the nature of the agency relationship and the legal history of the corporation sole, the court concluded in these words:

> [W]hether we recognize the appellee, complainant in the court below, in his capacity as bishop, as a corporation sole or not, the analogy to the common-law corporation sole is so complete as to bring him within the spirit and reason of the doctrine relating thereto, and vindicate our conclusion on the other grounds mentioned. *Id.* at 887, 112 So. at 860.

Accord: Fink v. Umsheid, 40 Kan. 271, 19 P. 623 (1888). There a Catholic bishop had used money supplied by his congregation to purchase land, in his own name, to be used for maintaining a church and school. When the bishop later attempted to sell the property, representatives of the local unincorporated congregation successfuly overturned the conveyance on the ground that the bishop held the land in trust for the congregation and did not have absolute discretion in disposing of it.

Archbishop v. Shipman, 79 Cal. 288, 21 P. 830 (1889), was yet another case in which a Roman Catholic archbishop "pur-

chased the property for and with the money of the church, but took the deed in his individual name." *Id.* at 293, 21 P. at 831. Although the Archbishop "exercised exclusive control over said property as fully as if he were the sole and individual owner thereof," *id.*, the court in *Shipman* ruled that the property was held in trust for the church. Here again the facts run parallel to the instant case.

CONCLUSION

When the Second Circuit decision is considered in light of the history and law which have been documented in the foregoing pages, it seems clear that the majority misconstrued the context in which this case should have been viewed. As a consequence the court grieviously misread the applicable law, violating Reverend Moon's rights to equal protection and the free exercise of religion.

Such error merits review by this Court in order to avert a miscarriage of justice in a case which could send the founder and leader of a worldwide religious movement to jail for following the centuries-old practice of holding church property in his individual name. When the major constitutional issues ably presented in the petition and briefs of other *amici* are added to this consideration, the need for review by this Court becomes paramount.

Respectfully submitted,

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